

Approved 4/11/07

**TOWN OF CUSHING
PLANNING BOARD
Minutes of Meeting
March 7, 2007**

Board Present: Bob Ellis, Evelyn Kalloch, Arthur Kiskila, Frank Muddle, Dan Remian, CEO Scott Bickford and Recording Secretary Deborah Sealey

Absent: None

1.Call to Order: Chairman Remian called the meeting to order at 7:08 pm and a roll call was taken. Mr. Ellis and Ms. Sealey had not yet arrived.

Chairman Remian thanked Arthur Kiskila for his years of service on the Board.

2. Minutes of 2/7/07: The Board decided to wait until Mr. Ellis arrived to vote on the minutes.

3.Communication from DEP: Mr. Remian mentioned a February letter from DEP's Rich Baker, inquiring as to the status of both a cutting violation and access to Lot 26 in RP. CEO Bickford had sent a reply to Mr. Baker and the chairman read this aloud. Mr. Bickford referred to an inspection of cutting near proposed Lot 26 and reported his agreement with developer James Tower to allow the matter to rest until the Board made a decision on Lot 26. Subsequently, the PB had voted on 2/7/07 to allow access through the RP area for development of Lot 26, as well as its annexation to the Meduncook Subdivision, he stated. He described the Board's requests for alternate routes from Mr. Tower and his responses. The CEO concluded that he should not take action on the cutting since the Board had approved the method of entry to Lot 26 and he saw nothing to be gained by citing a violation.

4.Meduncook Plantation Subdivision plan, Lot 26, to be signed by the Board: Mr. Remian said he had spoken with PB attorney Greg Cunningham at length about this application. He reported Mr. Cunningham's opinion that, based on DEP's position, last meeting's vote on this application could be reconsidered. The chairman said that the PB's by-laws clearly stated that only a member who had voted with the majority could move to reconsider the decision; Mr. Muddle, Mr. Ellis or Mr. Kiskila would have to initiate reconsideration. He added that only two days remained in the window for making such an appeal so it would have to be done this evening. Mr. Remian said DEP was not happy with the PB's violation of its ordinance by allowing development within RP. He added that he believed there was a disputed lot line on the plan and the regulations required that lines be depicted accurately. These two points led Mr. Remian to feel the decision should be reviewed. The chairman said that Mr. Baker would be sending a letter to the Selectmen asking for reversal of the decision based on the fact that the PB had violated its own ordinance. Mrs. Kalloch said she would like to see such a motion made.

Mr. Muddle said he was reluctant to make such a motion because he had voted in the affirmative since the rules required that any exception to putting a road through RP must be based on the fact that there were no reasonable alternatives. He said the Board had spent months reviewing this by looking at the general profiles of the land and he felt the economic harm of carving a road through already approved subdivision lots was not a reasonable solution to locating a road through RP. Mr. Muddle said the PB had spent a lot of time, as evidenced in the minutes, reviewing the issue of access to Lot 26; he was reluctant to revisit the issue. Mrs. Kalloch noted that the PB had asked for the P&S agreement for Lot 10, which had never been received. Mr. Remian said that Mr. Baker's main concern was that Mr. Tower had never demonstrated an alternate route outside of RP. Mr. Muddle said the approved lots in the subdivision had a book value and locating access over one of them would seriously affect its book value. CEO Bickford said it was not the Board's obligation to determine how to help somebody make or lose money. Mr. Remian reiterated that both Mr. Cunningham and Mr. Baker felt the decision could be reconsidered.

Patrick Cardon asked about the lot line that was not clear. Mr. Remian replied that it was based on a survey registered by Mr. Cardon and there was a 165' boundary in question on Mr. Tower's plan. Selectman David Glidden urged the Board to take another look at its decision on Lot 26 since the town had already been in trouble with the DEP once before. Andrew Hedderieg, representing the applicant, said that DEP was in the process of writing the permit for this project. He said the DEP had approved everything the developer had provided to them for the amendment. Mr. Hedderieg also said he thought the lot line in question did not abut Lot 26. Mr. Remian said the

lack of DEP approval meant the Board could not approve the project, but Mr. Hedderieg said DEP approval was a condition of the approval. Mr. Remian said the Board had been clear that it would not sign the approval until all paperwork was received and the CEO agreed. The chairman stated that the 30' ROW, disallowed by the Board, was still shown on the plan.

Mr. Ellis arrived at the meeting, followed by Ms. Sealey.

Mr. Muddle asked what the Board would be reviewing if it reconsidered its approval. Mr. Remian replied that the Board would have to receive what it had requested; namely, demonstration that there was no route outside of RP, along with the P&S agreement for Lot 10. He repeated that Mr. Baker had asked the Board to reconsider and Mr. Cunningham concurred. Mr. Ellis said he had gone through the minutes back to June 2006, tracking the actions on this amendment, and the area in which the PB might have fallen short was in depicting RP in Lot 10. In those discussions he had said that RP must be delineated in Lot 10 in order to determine if there was a route outside the RP area. Mr. Ellis said he had based his opinion that there was no alternate route on the fact that there was no RP defined in that lot; therefore, if it were to be revisited that would be the place to start. He said there was no way to determine if an alternate route was available outside RP unless RP were depicted in Lot 10.

Peter Haviland said common sense suggested that Mr. Tower's failure to provide the requested alternative route was the developer's problem, not the PB's. Mr. Ellis said there was a reconsideration provision in the Shoreland Zone Ordinance [SZO], but not in the subdivision regulations. The CEO said it was in the PB by-laws. Mr. Ellis asked if the request for reconsideration had come with any advice and the chairman said he thought the DEP would take some action because the PB had violated its own ordinance. Mr. Ellis ascertained that the letter from DEP to the Selectmen had not been received.

Mr. Ellis made a motion to wait until the DEP letter was received before making a decision to reconsider. He was told they could not wait as there were only two days left for reconsideration. Mr. Ellis withdrew his motion. David Glidden said he did not understand why the PB would allow any applicant not to provide requested information and then vote to approve his application. Mr. Ellis replied that the Board had ruled out the alternate route through Lot 10 that Mr. Tower presented because it could not determine whether it was outside RP. Mr. Remian said only a small portion of that route had been through Lot 10, but most of it was located in Mr. Tower's new purchase (Lot 26). Mr. Remian said a new SZO, showing no RP in Lot 10, had been submitted to the town and DEP. Mr. Ellis contended that the Board had been operating under the old map that did show RP on Lot 10; therefore, the PB could not prove an alternate route outside RP because it did not, at that time, know where RP was located.

Mr. Hedderieg said he was confused as to how the Board could revisit an alternate to Lot 26, which had been approved at the last meeting. Mr. Remian replied that the plan was unsigned and the Board had 30 days to reconsider its decision. Mr. Hedderieg said the drawing had been approved by the Board with conditions. Mr. Muddle said the Board had the right to revisit an issue if it felt it had made a mistake. He said he didn't believe the Board could reconsider the issue without land contours on Lot 10 and asked if Gartley & Dorsky should be hired to provide those. Mr. Remian said he thought the applicant could provide that information, as well as proof that Lot 10 was under contract. Mrs. Kalloch asked if the Board would have to put a time limitation on reconsideration and the chairman said the sooner the better, adding that Mr. Cunningham had thought 30 days would be ample.

Mr. Muddle made a motion that, with the lack of completed documentation on Lot 26, the Board was not ready to sign the plan and needed to reconsider its decision on the road, based on the evaluation of the slopes in Lot 10, which seemed to be the only possible alternative route. This motion died for lack of a second. Mr. Remian asked Mr. Hedderieg if he could provide a slope analysis of Lot 10. Mr. Hedderieg said he could, but he felt it had already been done. Mr. Ellis said he felt a motion to reconsider should not contain parameters that might limit the reconsideration. .

ACTION: Mr. Muddle made a motion, seconded by Mr. Ellis, that because of the lack of documentation allowing us to complete the application and sign it, we reconsider our decision to approve the road access to Lot 26, to be completed by the next meeting.
Carried 3-0-2 (Mrs. Kalloch and Mr. Remian abstained)

Mr. Glidden again said that he did not understand how the Board could vote on an application when the applicant had not supplied all of the information it had requested. He asked how the Board could hold one applicant, but not the next, accountable. Mr. Muddle said the unsubmitted information had not been crucial to the decision and Mr. Glidden replied that it should not then have been requested. Mr. Ellis said the Board could ask and still proceed, but the shortcoming had been that requests for information were not always voted on.

Remian asked Mr. Hedderieg if he was clear on what the Board wanted. Mr. Hedderieg said he was not and asked if the Board needed to take a vote on what it was requesting. The chairman said it had taken such a vote in August and would put it in writing for the applicant, probably by Friday. Mr. Ellis said the Board had voted in December to release the applicant from his responsibility to provide the alternate route and the P&S agreement. The CEO asked if the Lot 26 building permit application would be tabled until Lot 26 had access. He clarified that he had been asked not to sign the permit until the Lot 26 approval had been signed, because there would then be no access to that lot. Mr. Ellis said that both applications would have to be reconsidered because they were interdependent and had been voted on together. He stated that the Board had the right to limit the scope of the review.

ACTION: Mr. Ellis made a motion, seconded by Mr. Muddle, that the PB reconsider both the Shoreland Zone land use permit and the subdivision amendment application for Lot 26.
Carried 3-0-2 (Mrs. Kalloch and Mr. Remian abstained)

5. Continuation of Robbins Mountain Subdivision, Map 5, Lots 84, 85 & 86: Chairman Remian stated that this application remained incomplete because the financial capability statement had not been received. Mr. Bickford mentioned the letter from Machias Savings Bank, which merely said the bank looked forward to doing further business with Mr. Tower. Mr. Remian said a consent agreement had been submitted more recently but did not satisfy the Board's request. Mr. Ellis said the Board had asked Wayne Crandall, Mr. Tower's attorney, for a bank letter attesting to Mr. Tower's financial capability to complete the Robbins Mountain project. The chairman said Mr. Crandall had reiterated what would suffice and advised Mr. Hedderieg to check with him.

ACTION: Mr. Remian made a motion, seconded by Mrs. Kalloch, to table Robbins Mountain until we receive a complete new package for that application, to include the financial capability.
Carried 5-0-0

Mrs. Kalloch wondered if the Board could ask for a new application, since this one was submitted in June 2006. Mr. Remian said Mr. Cunningham had advised that the Board would be within its rights to do so. Mr. Ellis suggested referring Mr. Tower's representative to the June 21, 2006 minutes (Page 15), which included a list of specifics to be included on the plan. In addition, he noted that the July 5, 2006 minutes (Page 3) covered a discussion regarding the lawyers adding language concerning the septic versus well issue. The CEO suggested copying the relevant portion of those minutes for Mr. Hedderieg this evening.

Mr. Cardon said his newly submitted survey might affect this application. Mr. Remian agreed and suggested Mr. Hedderieg also look at that since lines were required to be in order on the plan. Mr. Bickford clarified with the chairman that the Board was requesting a resubmittal rather than a new application. Mr. Glidden ascertained that the requests referred to in the June and July minutes had been voted on at that time.

6. Old Business: Mr. Ellis said he was bothered that the by-laws, while addressing who could abstain or recuse, did not include criteria to hold members accountable to vote.

Mr. Remian said he would like to review the subdivision regulations at a workshop this month. The Board agreed to do this on March 29 at 7:00 am. Mr. Remian said he would have a draft copy to the members by March 22 or 23.

Mr. Remian concluded the meeting by thanking Mr. Kiskila again for his service. Mr. Kiskila said he would be available to the Board for any questions concerning life, safety or fire protection issues.

7. Adjournment: Mr. Ellis made a motion, seconded by Mr. Muddle, to adjourn the meeting at 8:17 pm.
Carried 5-0-0

Respectfully submitted,

Deborah E. Sealey
Recording Secretary